

AMENDED IN ASSEMBLY JUNE 22, 2005

AMENDED IN SENATE MARCH 31, 2005

**SENATE BILL**

**No. 192**

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**Introduced by Senator Scott**

February 10, 2005

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An act to add ~~Section~~ *Sections 789.8 and 789.85* to the Insurance Code, relating to annuities.

LEGISLATIVE COUNSEL'S DIGEST

SB 192, as amended, Scott. Annuities: seniors.

Existing law generally regulates insurance, including annuity products. Existing law requires a life insurance agent to provide specified disclosures to a senior 65 years of age or older in certain circumstances. Existing law prohibits the sale of an annuity to a senior in specified circumstances.

This bill would require *a life insurance agent who sells a financial product to a senior to make specified disclosures regarding the effects under the Medi-Cal program of the purchase of the annuity.*

*The bill would require every insurer or other person transacting an annuity business authorized to issue annuities in California to develop and use or adopt written suitability standards to determine whether the purchase or replacement of an annuity contract is appropriate for the needs of an applicant or annuitant who is 65 years of age or older, except as specified. The bill would require an insurer that markets annuities to reject an application to purchase an annuity if it determines that the applicant or annuitant does not meet its financial suitability standards, or if he or she has declined to provide the information requested prohibit an insurer from issuing an annuity if it determines the annuity does not meet its suitability standards, and would provide that an insurer or agent has no obligation to issue an*

*annuity under certain circumstances.* It would set forth criteria to be applied in developing suitability standards, ~~would~~ require that certain information be provided to the ~~commissioner~~ *Insurance Commissioner*, *allow the commissioner to order corrective actions for violations of these provisions*, and ~~would~~ impose other specified requirements on insurers ~~and other persons that offer or market and agents that sell annuities.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 789.8 of the Insurance Code is amended  
2     to read:  
3     789.8. (a) “Elder” for purposes of this section means any  
4     person residing in this state who is 65 years of age or older.  
5     (b) If a life agent offers to sell to an elder any life insurance or  
6     annuity product, the life agent shall advise an elder or elder’s  
7     agent in writing that the sale or liquidation of any stock, bond,  
8     IRA, certificate of deposit, mutual fund, annuity, or other asset to  
9     fund the purchase of this product may have tax consequences,  
10    early withdrawal penalties, or other costs or penalties as a result  
11    of the sale or liquidation, and that the elder or elder’s agent may  
12    wish to consult independent legal or financial advice before  
13    selling or liquidating any assets and prior to the purchase of any  
14    life or annuity products being solicited, offered for sale, or sold.  
15    This section does not apply to a credit life insurance product as  
16    defined in Section 779.2.  
17    (c) (1) A life agent who offers for sale or sells a financial  
18    product to an elder on the basis of the product’s treatment under  
19    the Medi-Cal program may not negligently misrepresent the  
20    treatment of any asset under the statutes and rules and regulations  
21    of the Medi-Cal program, as it pertains to the determination of  
22    the elder’s eligibility for any program of public assistance.  
23    (2) *The agent shall inform the elder that the annuity is subject*  
24    *to recovery by the state upon the annuitant’s death under the*  
25    *provisions of the Medi-Cal Recovery Program, as set forth in*  
26    *Section 50960 of Title 22 of the California Code of Regulations.*  
27    *The agent shall also inform the elder that income derived from*  
28    *the annuity shall be used for the annuitant’s share of costs and, if*

1 *married, impacts the minimum monthly maintenance needs*  
2 *allowance of the annuitant's spouse.*

3 (d) A life agent who offers for sale or sells any financial  
4 product on the basis of its treatment under the Medi-Cal program  
5 shall provide, in writing, the following disclosure to the elder or  
6 the elder's agent:

7  
8 "NOTICE REGARDING STANDARDS FOR MEDI-CAL  
9 ELIGIBILITY

10  
11 If you or your spouse are considering purchasing a financial  
12 product based on its treatment under the Medi-Cal program, read  
13 this important message!

14 You or your spouse do not have to use up all of your savings  
15 before applying for Medi-Cal.

16  
17 UNMARRIED RESIDENT

18  
19 An unmarried resident may be eligible for Medi-Cal benefits if  
20 he or she has less than (insert amount of individual's resource  
21 allowance) in countable resources.

22 The Medi-Cal recipient is allowed to keep from his or her  
23 monthly income a personal allowance of (insert amount of  
24 personal needs allowance) plus the amount of any health  
25 insurance premiums paid. The remainder of the monthly income  
26 is paid to the nursing facility as a monthly share of cost.

27  
28 MARRIED RESIDENT

29  
30 COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one  
31 spouse lives in a nursing facility, and the other spouse does not  
32 live in a facility, the Medi-Cal program will pay some or all of  
33 the nursing facility costs as long as the couple together does not  
34 have more than (insert amount of community countable assets).

35 MINIMUM MONTHLY MAINTENANCE NEEDS  
36 ALLOWANCE: If a spouse is eligible for Medi-Cal payment of  
37 nursing facility costs, the spouse living at home is allowed to  
38 keep a monthly income of at least his or her individual monthly  
39 income or (insert amount of the minimum monthly maintenance  
40 needs allowance), whichever is greater.

1 FAIR HEARINGS AND COURT ORDERS

2  
3 Under certain circumstances, an at-home spouse can obtain an  
4 order from an administrative law judge or court that will allow  
5 the at-home spouse to retain additional resources or income. The  
6 order may allow the couple to retain more than (insert amount of  
7 community spouse resource allowance plus individual's resource  
8 allowance) in countable resources. The order also may allow the  
9 at-home spouse to retain more than (insert amount of the monthly  
10 maintenance needs allowance) in monthly income.

11  
12 REAL AND PERSONAL PROPERTY EXEMPTIONS

13  
14 Many of your assets may already be exempt. Exempt means  
15 that the assets are not counted when determining eligibility for  
16 Medi-Cal.

17  
18 REAL PROPERTY EXEMPTIONS

19  
20 ONE PRINCIPAL RESIDENCE: One property used as a home  
21 is exempt. The home will remain exempt in determining  
22 eligibility if the applicant intends to return home someday.

23 The home also continues to be exempt if the applicant's spouse  
24 or dependent relative continues to live in it.

25 Money received from the sale of a home can be exempt for up  
26 to six months if the money is going to be used for the purchase of  
27 another home.

28 REAL PROPERTY USED IN A BUSINESS OR TRADE:  
29 Real estate used in a trade or business is exempt regardless of its  
30 equity value and whether it produces income.

31  
32 PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

33  
34 IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION  
35 PLANS: These funds are exempt if the family member whose  
36 name it is in does not want Medi-Cal. If held in the name of a  
37 person who wants Medi-Cal and payments of principal and  
38 interest are being received, the balance is considered unavailable  
39 and is not counted. It is not necessary to annuitize, convert to an

1 annuity, or otherwise change the form of the assets in order for  
2 them to be unavailable.

3 PERSONAL PROPERTY USED IN A TRADE OR  
4 BUSINESS.

5 ONE MOTOR VEHICLE.

6 IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE  
7 PREPAID BURIAL CONTRACTS.

8 THERE MAY BE OTHER ASSETS THAT MAY BE  
9 EXEMPT.

10 This is only a brief description of the Medi-Cal eligibility rules.  
11 For more detailed information, you should call your county  
12 welfare department. Also, you are advised to contact a legal  
13 services program for seniors or an attorney who is not connected  
14 with the sale of this product.

15 I have read the above notice and have received a copy.

16 Dated: \_\_\_\_\_ Signature: \_\_\_\_\_”

17 The statement required in this subdivision shall be printed in at  
18 least 12-point type, shall be clearly separate from any other  
19 document or writing, and shall be signed by the prospective  
20 purchaser and that person’s spouse, and legal representative, if  
21 any.

22 (e) The State Department of Health Services shall update this  
23 form to ensure consistency with state and federal law and make  
24 the disclosure available to agents and brokers through its Internet  
25 Web site.

26 (f) Nothing in this section allows or is intended to allow the  
27 unlawful practice of law.

28 (g) Subdivisions (b) and (d) shall become operative on July 1,  
29 2001.

30 ~~SECTION 1.—~~

31 SEC. 2. Section 789.85 is added to the Insurance Code, to  
32 read:

33 789.85. (a) Every insurer ~~or other person~~ authorized to  
34 ~~transact an annuity business~~ *issue annuities* in California shall do  
35 each of the following:

36 (1) ~~Develop and use~~ *or adopt* written suitability standards to  
37 determine whether the purchase or replacement of an annuity  
38 contract is appropriate for the needs of an applicant or annuitant  
39 who is a senior.

~~(2) Develop and use procedures to determine whether the sale and marketing of annuity contracts to seniors meets the suitability standards developed by the insurer or other person.~~

~~(3) Train its agents to use its suitability standards in marketing annuities.~~

*(2) Ensure the use of procedures to determine whether the sale and issuance of annuity contracts to seniors meet the suitability standards developed by the insurer.*

*(3) Adopt or establish and maintain a system to supervise life agents that is designed to achieve compliance with this section and remediate identified problems and complaints. An insurer may contract with a third party, including a managing general agent or independent agency, to establish and maintain a system of supervision with respect to the insurer's appointed life agents. An insurer shall ensure that the third party is performing the functions required under this subdivision by taking any action that is reasonable to enforce the contractual obligation to perform those functions.*

*(4) Maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner. The commissioner may order amendment or revision of the suitability standards if any portion violates California or other applicable the law.*

*(5) Conduct periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this section and the applicable suitability standards.*

~~(b) The suitability standards developed by the insurer or other person shall take into account the senior's insurance needs and goals, including, but not limited to, the following:~~

~~(1) His or her age.~~

~~(2) His or her tolerance for investment risk tax status.~~

~~(3) His or her financial sophistication status, including the percentage of the senior's net worth that the proposed annuity represents.~~

~~(4) His or her ability to pay for the proposed annuity without liquidating assets.~~

~~(5) His or her goals or needs with respect to the annuity and the advantages and disadvantages of investing in this annuity to meet these goals or needs.~~

1 ~~(6) The value, benefits, and costs of his or her existing~~  
2 ~~investments, if any, when compared to the values, benefits, and~~  
3 ~~costs of the proposed annuity purchase.~~

4 ~~(7) Whether he or she is replacing an existing annuity, and~~  
5 ~~whether the replacement is unnecessary, as defined in Section~~  
6 ~~10509.8.~~

7 ~~(8) The disadvantages related to the conversion of any existing~~  
8 ~~investments, savings or other sources of funding for the proposed~~  
9 ~~annuity.~~

10 ~~(9) His or her need to have funds readily available for major~~  
11 ~~expenses, including emergency expenses that may arise from~~  
12 ~~time to time in his or her daily life, and the effect of the annuity~~  
13 ~~purchase on his or her ability to access those funds.~~

14 ~~(10) The availability of funds for catastrophic life changes that~~  
15 ~~may lead to long-term in-home health care or a change of~~  
16 ~~domicile into a long-term care setting, such as a continuing care,~~  
17 ~~assisted living, residential care, or nursing home.~~

18 ~~(11) His or her tax status at the time of purchase, expected tax~~  
19 ~~status when the annuity matures, and ability to pay capital gains~~  
20 ~~taxes that may arise from selling assets in order to purchase an~~  
21 ~~annuity.~~

22 ~~(12) Whether he or she believes that the annuity will allow~~  
23 ~~him or her to qualify for Medi-Cal or Medicaid, and whether any~~  
24 ~~other factors identified in Section 789.9 apply.~~

25 ~~(13) Whether he or she has been adequately informed of the~~  
26 ~~restrictions on the proposed annuity date, the earliest maturity~~  
27 ~~date, his or her ability to change the date to annuitize, and the~~  
28 ~~penalties or consequences for early surrender.~~

29 ~~(e) The insurer or other person, and if an agent is involved, the~~  
30 ~~agent, shall make reasonable efforts to obtain the information set~~  
31 ~~forth in subdivision (b) and may request that the applicant or~~  
32 ~~annuitant provide additional information necessary to determine~~  
33 ~~suitability.~~

34 ~~(d) The insurer or other person shall use the suitability~~  
35 ~~standards developed pursuant to this section in determining~~  
36 ~~whether issuing the annuity is appropriate for the senior.~~

37 ~~(e) In marketing an annuity, an agent or other person shall use~~  
38 ~~the suitability standards developed by the insurer or other person~~  
39 ~~pursuant to paragraph (1) of subdivision (a).~~

~~(f) If the insurer or other person determines that the senior does not meet its financial suitability standards, or if he or she has declined to provide the information requested, the insurer or other person shall reject the application.~~

*(4) His or her objectives and how the proposed annuity fulfills those objectives.*

*(5) Whether the senior has funds, exclusive of the proposed annuity, sufficient to finance health care needs, residential care, long-term care or other similar expenses.*

*(6) Any other information used or considered reasonable by the life agent, or the insurer.*

*(c) If sufficient information to make a determination is not available, the life agent, or insurer where no life agent is involved, shall make reasonable efforts to obtain the information set forth in subdivision (b).*

*(d) The life agent, or insurer where no life agent is involved, shall use the suitability standards developed pursuant to this section in determining whether issuing the annuity is appropriate for the senior. An insurer shall not issue an annuity pursuant to its system to supervise life agents if the insurer determines that the issuance of the annuity does not meet its suitability standards.*

*(e) (1) Except as provided in paragraph (2), neither a life agent, nor an insurer where no life agent is involved, shall have any obligation to a senior consumer under this section related to the issuance of an annuity if the senior consumer does any of the following:*

*(A) Refuses to provide relevant information requested by the insurer or life agent and signs a written statement to that effect.*

*(B) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or life agent.*

*(C) Provides materially inaccurate information, or fails to provide material information that is requested by the insurer or life agent and is necessary to determine suitability.*

*(2) The issuance or delivery by an insurer or life agent of an annuity subject to this section shall be reasonable under all the circumstances that the insurer or life agent knew or should have known about pursuant to the insurer's suitability standards at the time of the sale.*

~~(g)~~



1 (f) The insurer or other person shall report the following  
2 information to the commissioner on an annual basis:

3 (1) The total number of applications for annuities received  
4 from residents of this state.

5 (2) The age of the applicants.

6 ~~(3) The number of applicants or annuitants who did not meet~~  
7 ~~the suitability standards of the insurer or other person.~~

8 ~~(4) If the suitability standards of the insurer or other person~~  
9 ~~include a provision for special exemptions to the standards, the~~  
10 ~~number of applicants who were issued annuities after obtaining~~  
11 ~~an exemption from those suitability standards, and the reasons~~  
12 ~~that the insurer or other person granted those exemptions.~~

13 ~~(h) For the purposes of this section, "senior" means a person~~

14 ~~(3) The total number of applications rejected and the reasons~~  
15 ~~therefor.~~

16 (g) Each insurer, managing general agent, and life agent, or  
17 the independent agency contracted to supervise its life agents,  
18 shall maintain or be able to make available to the commissioner  
19 records of the information collected from the senior consumer  
20 and other information that was used for underwriting or  
21 evaluating suitability for five years after the insurance  
22 transaction is completed by the insurer. An insurer is permitted,  
23 but shall not be required, to maintain documentation on behalf of  
24 a life agent.

25 (h) Records required to be maintained by this section may be  
26 maintained in paper, photographic, microprocess, magnetic, or  
27 electronic media, or by any process that accurately reproduces  
28 the actual document.

29 (i) For the purposes of this section, the following definitions  
30 apply:

31 (1) "Senior" means a person 65 years of age or older.

32 ~~(i)~~

33 (2) "Insurer" means any entity authorized to issue annuities in  
34 California, including a fraternal organization.

35 (j) If any provision in this section is in conflict with any  
36 provision of Chapter 3 (commencing with Section 25230) of Part  
37 3 of Title 4 of the Corporations Code, the provision of the  
38 Corporations Code shall control.

39 (k) With respect to recommendations for the sale of variable  
40 annuities registered under federal securities statutes, compliance

1 with the National Association of Securities Dealers (NASD)  
2 Conduct Rules pertaining to suitability shall satisfy the  
3 requirements of this section. The commissioner may enforce the  
4 provisions of those rules.

5 (l) Unless otherwise specifically included, this section shall  
6 not apply to contracts used to fund any of the following:

7 (1) An employee pension or welfare benefit plan that is  
8 covered by the Employee Retirement and Income Security Act  
9 (ERISA).

10 (2) A plan described by Section 401(a), 401(k), 403(b), 408(k),  
11 or 408(p) of the United States Internal Revenue Code, as  
12 amended, if established or maintained by an employer.

13 (3) A government or church plan defined in Section 414 of the  
14 United States Internal Revenue Code, a government or church  
15 welfare benefit plan, or a deferred compensation plan of a state  
16 or local government or tax exempt organization under Section  
17 457 of the United States Internal Revenue Code.

18 (4) A nonqualified deferred compensation arrangement  
19 established or maintained by an employer or plan sponsor.

20 (5) A settlement of or assumption of liabilities associated with  
21 personal injury litigation or any dispute or claim resolution  
22 process.

23 (6) A formal prepaid funeral contract under ten thousand  
24 dollars (\$10,000).

25 (m) The Commissioner may order:

26 (1) An insurer to take reasonably appropriate corrective  
27 action for any senior consumer harmed by a violation of this  
28 section by the insurer or its appointed life agent.

29 (2) A life agent to take reasonably appropriate corrective  
30 action for any senior consumer harmed by the life agent's  
31 violation of this section.

32 (3) A managing general agent that employs or contracts with  
33 a life agent to sell, or solicit the sale of annuities, to senior  
34 consumers, to take reasonably appropriate corrective action for  
35 any senior consumer harmed by the life agent's violation of this  
36 section.

1     *(n) Any applicable penalty for a violation of this section may*  
2     *be reduced or eliminated if corrective action for the senior*  
3     *consumer was taken promptly after a violation was discovered.*

O